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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/615,606	07/13/2000	Mark S. Abad	38-21(15444)C	7322

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EXAMINER

BORIN, MICHAEL L

ART UNIT

PAPER NUMBER

1631

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/615,606
Filing Date: July 13, 2000
Appellant(s): ABAD ET AL.

Thomas E. Holsten
David R. Marsh
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to appellant's Reply Brief filed 11/05/2004.

The Reply Brief filed 11/05/2004 addresses rejection under 35 USC § 112, first paragraph. First, Examiner maintains that there are two separate written

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description rejections made under 35 USC § 112, first paragraph disagrees with the heading "The Examiner's New Points of Argument", the first addressing "comprising" language, and the second - addressing "% identity" language. Appellant provides arguments only regarding the first "written description" rejection.

Appellant argues that specification provides conditions for hybridization and site-directed mutagenesis. These conditions, however, are not related to the issue of whether applicant is in possession of polynucleotides "comprising", or having certain "% identity" to SEQ ID No. 2. Appellant, again, provide argument that SEQ ID No. 2 is sufficient to describe any genus "comprising", or having certain "% identity" to SEQ ID No. 2. Examiner maintains that the claims embrace full length mRNAs, cDNAs and genomic sequences, and the specification provides no physical (i.e. structural) characteristics of these molecules to distinguish them from other nucleic acid molecules comprising the claimed SEQ ID NO. 2, and no other indication that would suggest Appellant possessed them. Similarly, for polynucleotides having structure other than SEQ ID No. 2, i.e., having certain % identity to SEQ ID No. 2, appellant have not demonstrated sequence information indicating what is the necessary common attribute for the polynucleotides encompassed by the claimed genus to encode proteins belonging to the same species (maize, for example).

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For the above reasons, it is believed that the rejection should be sustained.

Respectively submitted,

Michael Borin

Primary Examiner

A handwritten signature in black ink, appearing to read 'Michael Borin', written over the printed name and title.